

# ARKANSAS SUPREME COURT

No. CR 08-1204

ALAN RAY CLUCK  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered December 11, 2008

PRO SE MOTION FOR  
RECONSIDERATION OF NOTICE OF  
APPEAL [CIRCUIT COURT OF  
CRAWFORD COUNTY, CR 2003-311,  
HON. GARY COTTRELL, JUDGE]

MOTION TREATED AS MOTION FOR  
BELATED APPEAL AND DISMISSED.

## PER CURIAM

Petitioner Alan Ray Cluck was found guilty by a jury of possession of drug paraphernalia with intent to manufacture a controlled substance, methamphetamine. A sentence of 180 months' imprisonment was imposed. We affirmed. *Cluck v. State*, 365 Ark. 166, 226 S.W.3d 780 (2006).

Subsequently, petitioner timely filed in the trial court a pro se petition pursuant to Criminal Procedure Rule 37.1 challenging the judgment. The petition was denied, and this court affirmed the order. *Cluck v. State*, CR 06-1213 (Ark. Oct. 25, 2007) (per curiam).

On May 13, 2008, petitioner filed in the trial court a pro se petition to correct sentence pursuant to Arkansas Code Annotated §16-90-111 (Supp. 2005). The petition was denied on the grounds that it was not timely filed and the court had previously denied two motions seeking the same relief. Petitioner did not file a timely notice of appeal from the order, and he now seeks by pro se motion "reconsideration of notice of appeal," asking that he be permitted to proceed with an appeal of the order. We treat the motion as a motion for belated appeal pursuant to Rule 2(e) of the

Rules of Appellate Procedure--Criminal.

We need not consider petitioner's reasons for failing to file a timely notice of appeal because he could not prevail on appeal if the motion were granted as the petition to correct sentence pursuant to Section 16-90-111 was not timely filed. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

A claim that a sentence was illegal must be raised in a petition filed in the trial court within sixty days of the date the mandate is issued following affirmance of the judgment in accordance with Arkansas Rule of Criminal Procedure 37.2 (c). See *Reed v. State, supra* (holding that Rule 37.1 superseded the time limits imposed in Section 16-90-111 for correction or reduction of a sentence). The time limits set out in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on an untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). The court could have dismissed petitioner's petition as an unauthorized second petition for postconviction relief under Rule 37.2(b), but even if petitioner's petition had been the first such petition filed, it was not filed within the time period allowed to claim that a sentence was illegal, and thus petitioner was entitled to no relief under the statute.

Motion treated as motion for belated appeal and dismissed.